

¹ The facts presented in the Background section are taken from the Fox Lake's Complaint.

The other Defendant in this action, Robert Leber, who is Richard Leber's cousin, was employed by Fox Lake in the Water and Sewers Department from August 1990 to October 1997.

Fox Lake alleges that from 1992 until April 1995, Richard Leber, pursuant to his authority as the Superintendent of the Water and Sewers Department, caused Fox Lake to purchase 19 water meters, which were "intended only for the use by the Village for property in the Village and should have been used in and by the Village only for the intended purpose." However, according to Fox Lake, Richard and Robert Leber removed, or caused to be removed, the 19 water meters purchased by Fox Lake.

After removing the 19 water meters, Robert Leber, at the direction of Richard Leber, allegedly installed some of the 19 water meters in the Village of Johnsburg, which allegedly paid Smith Engineering for the costs and installation of the water meters. Fox Lake never received any compensation for the allegedly misappropriated water meters.

After Robert Leber's wife alerted Fox Lake of the misappropriated water meters, Fox Lake filed the instant action against Richard Leber and Robert Leber alleging claims under the federal Racketeer Influenced and Corrupt Organization Act ("RICO") and state law.

In response, to Fox Lake's Complaint, Richard Leber filed a Motion to Dismiss, pursuant to Rule 12(b)(6). However, Robert Leber, failed to answer or otherwise respond to the Complaint, and on June 19, 2000, Fox Lake filed a Motion for Entry of Default Judgment against Robert Leber.

STANDARD OF REVIEW

In ruling on a motion to dismiss pursuant to Rule 12(b)(6), the court must assume the truth of all facts alleged in the complaint, construing the allegations liberally and viewing them in the light most

favorable to the plaintiff. See, e.g., McMath v. City of Gary, 976 F.2d 1026, 1031 (7th Cir.1992); Gillman v. Burlington N. R.R. Co., 878 F.2d 1020, 1022 (7th Cir.1989). Dismissal is properly granted only if it is clear that no set of facts which the plaintiff could prove consistent with the pleadings would entitle the plaintiff to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Kunik v. Racine County, Wis., 946 F.2d 1574, 1579 (7th Cir.1991), citing Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

The court will accept all well-pled factual allegations in the complaint as true. Miree v. DeKalb County, 433 U.S. 25, 27 n. 2 (1977). In addition, the court will construe the complaint liberally and will view the allegations in the light most favorable to the non-moving party. Craigs, Inc. v. General Electric Capital Corp., 12 F.3d 686, 688 (7th Cir.1993). However, the court is neither bound by the plaintiff's legal characterization of the facts, nor required to ignore facts set forth in the complaint that undermine the plaintiff's claims. Scott v. O'Grady, 975 F.2d 366, 368 (7th Cir.1992).

ANALYSIS

Fox Lake's Complaint sets forth the following claims under federal RICO and state law: Count I: a violation of 18 U.S.C. § 1962(a) against Richard and Robert Leber; Count II: a violation of 18 U.S.C. § 1962(d) against Richard and Robert Leber; Count III: a claim of conversion against Richard and Robert Leber; Count IV: a claim of fraud against Richard Leber; and Count V: a claim of breach of fiduciary duty against Richard Leber. In his motion to dismiss, pursuant to Rule 12(b)(6), Richard Leber contests each of these counts. The court will address each of these claims in turn.

I. Count I -- Section 1962(a) RICO claim

Section 1962(a) provides, in relevant part, that:

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which effect, interstate commerce.

Here, Leber contends that Count I fails to state a claim under Section 1962(a) because Fox Lake has failed to allege: (A) any injury as a result of Leber's use or investment of the income derived from the racketeering activity; (B) predicate acts of mail fraud with the particularity required by Federal Rule of Civil Procedure 9(b); and (C) that Leber engaged in a pattern of racketeering activity. This court will discuss each of these contentions in turn.

A. Injury as a Result of the Use or Investment of Income Derived From the Racketeering Activity

Although the Seventh Circuit has not addressed the issue, the majority of circuits "hold that the use or investment of the racketeering income must proximately cause the plaintiff's injury; injury caused by the predicate racketeering acts is inadequate." Vicom, Inc. v. Harbridge Merchant Servs., Inc., 20 F.3d 771, 779 n.6 (7th Cir.1994) (compiling cases in discussing but not adopting this standard). See also Fujiaswa Pharmaceutical Co. v. Kapoor, 814 F. Supp. 720, 734 (N.D. Ill. 1993) (compiling cases). Likewise, "a majority of decisions in this district hold that the plaintiff must allege that the use or investment of the racketeering income has caused his injury; alleging injury by the predicate acts is

insufficient." Chapman v. Ontra, Inc., 1997 WL 321681, at *7 (N.D. Ill. June 6, 1997); See also Early v. K-Tel Int'l, Inc., 1999 WL 181994, at *5-6 (N.D. Ill. Mar. 24, 1999).

This court agrees with the reasoning applied by the majority position. The plain language of the statute provides the principal support for this position. Midwest Grinding Co. v. Spitz, 716 F. Supp. 1087, 1090-91 (N.D. Ill. 1989) (J. Rovner). Section 1964(c) provides that a civil RICO plaintiff may recover only if injured "by reason of" a § 1962 violation. Rose v. Mony Life Ins. Co., 82 F. Supp. 2d 920, 923 (N.D. Ill. 2000). A Section 1962(a) violation occurs when the defendant uses or invests the proceeds of its racketeering activity in an enterprise, and not by merely engaging in the predicate acts of racketeering. Early, 1999 WL 181994, at *5-6. Moreover, simply alleging that the defendant "reinvested the racketeering income" or that the plaintiff was injured by the predicate acts themselves is not enough to properly allege a Section 1962(a) claim. Id. at *5-6. Therefore, under the plain language of the statute, a RICO plaintiff must allege an injury caused by the defendant's use or investment of racketeering income in an enterprise. See Rose, 82 F. Supp. 2d at 923; Early, 1999 WL 181994, at *5-6; Midwest Grinding Co., 716 F. Supp. at 1090-92; P.M.F. Services, Inc. v. Grady, 681 F. Supp. 549, 556 (N.D. Ill. 1988). Consequently, this court adopts the majority position, and holds that Fox Lake must allege an injury caused by the Leber's use or investment of racketeering income in an enterprise.

Here, Fox Lake argues that even if this court adopts the majority position, its allegations of injury are sufficient to properly state a claim under Section 1962(a). According to Fox Lake, it was injured both by the misappropriation of the 19 water meters and by "the fact that the income derived

from Leber for the misappropriated water meters was paid to Smith Engineering, rather than to [Fox Lake].” (Resp. at 4.)

While Fox Lake might have been injured by the misappropriation of the 19 water meters, it has not specifically alleged how it was injured by the Leber's use or investment of racketeering income in an enterprise. Indeed, Fox Lake's Complaint specifically states that it purchased the water meters for its own use, and not to be sold to another party. Fox Lake does allege that “Richard Leber and Robert Leber derived income and/or proceeds through the pattern of racketeering activity . . . and used or invested such proceeds and/or income, directly or indirectly, to operate and maintain Smith Engineering.” (Compl. ¶ 43.) However, as explained below, these general allegations do not satisfy the heightened pleading requirements to adequately plead fraud under Rule 9(b). Consequently, the court finds that Fox Lake has failed to allege an injury caused by the Leber's use or investment of racketeering income in an enterprise, and therefore, this court grants Leber's motion to dismiss Fox Lake's Section 1962(a) claim.² See Early, 1999 WL 181994, at *5-6 (dismissing RICO plaintiff's Section 1962(a) claim where the plaintiff failed to specifically allege that “the defendants reinvested the proceeds from the scheme, [and did] not identify any injury flowing from the use or investment of the racketeering income”).

B. Mail Fraud Must be Pled with Particularity as Required by Rule 9(b)

² Although the court finds that Fox Lake's Complaint should be dismissed for failure to allege an injury caused by the Leber's use or investment of racketeering income in an enterprise, the court will nevertheless discuss Leber's contention that Fox Lake has failed to allege: (1) predicate acts of mail fraud with the particularity required by Rule 9(b); and (2) Leber engaged in a pattern of racketeering activity.

To plead mail fraud, the plaintiff must allege that the defendant devised a scheme to defraud and used the mails or knowingly caused another to use the mails to execute the scheme. 18 U.S.C. § 1341. See also McDonald v. Schencker, 18 F.3d 491, 497 (7th Cir. 1994). In addition, a RICO plaintiff must meet the strict pleading requirements of Rule 9(b), which requires that “[i]n all averments of fraud . . . , the circumstances constituting fraud . . . shall be stated with particularity.” Jepson, Inc. v. Makita Corp., 34 F.3d 1321, 1327 (7th Cir. 1994).

The purpose of Rule 9(b) is to: (1) protect the reputation of the defendant; (2) “minimize strike suits and fishing expeditions”; and (3) provide adequate notice of the claim to the adverse party. Id. To meet the requirements of Rule 9(b), the plaintiff “must state with particularity specific fraudulent acts comprising fraud [and] describe the ‘time place and particular contents of the false representations, as well as the identity of the party making the misrepresentation, and what was obtained or given up thereby.’” Landon v. GTE Communications Services, Inc., 696 F. Supp. 1213, 1217-18 (N.D. Ill. 1988). Accord Jepson, Inc., 34 F.3d at 1327. In a RICO action the plaintiff must further allege who caused what to be mailed and how each specific act of mail fraud actually furthered the fraudulent scheme. Landon, 696 F. Supp. at 1218. The purpose of this requirement is so that “the complaint should inform each defendant of the nature of his alleged participation in the fraud.” Vicom, Inc., 20 F.3d at 778-79. See also Midwest Grinding Co., 716 F. Supp. at 1093-94 (dismissing a RICO claim where the complaint failed to specifically identify which defendants made which alleged misrepresentations and failed to identify the “nature of the conspiracy and the defendant’s role in it with particularity”).

In Landon, 696 F. Supp. at 1218, the court dismissed the plaintiff's RICO claim for failing to specifically plead the fraudulent predicate acts as required by Rule 9(b). The court noted that the plaintiffs provided "an extensive list of the . . . mailings and identified the dates and the specific individuals," but did not allege the contents of the letters, and "more importantly, how each mailing furthered the fraudulent scheme or related to one of the transactions that constitute the pattern." Id.

Here, Fox Lake's Complaint alleges that "Richard Leber and Robert Leber committed multiple instances of mail fraud in violation of 18 U.S.C. § 1341 in that they caused specific payments to be sent via the United States Postal Service to Water Pro/U.S. Filter for the subject water meters, all acts which were a 'pattern of racketeering activity,' as defined by 18 U.S.C. § 1961(5), at least one of which occurred after the effective date of the RICO act." (Compl. ¶ 40.) According to Fox Lake, these mailings occurred on: January 19, 1993; February 23, 1993; May 16, 1994; and December 5, 1994.

The court finds that these allegations do not satisfy the heightened pleading requirements of Rule 9(b) because the Complaint did not specifically allege: (1) how each mailing furthered the fraudulent scheme or related to one of the transactions that constituted the pattern; and (2) failed to specifically identify which defendants made which alleged misrepresentations and failed to identify the "nature of the conspiracy and the defendant's role in it with particularity." Midwest Grinding Co., 716 F. Supp. at 1093-94. Thus, Fox Lake's Section 1962(a) claim should be dismissed for failure to adequately plead fraud under Rule 9(b). See McDonald, 18 F.3d at 495 (affirming dismissal of a RICO claim for failure to adequately plead fraud under Rule 9(b)).

C. Pattern of Racketeering Activity

Finally, Leber contends that the court should dismiss Fox Lake's Section 1962(a) claim because the Complaint fails to allege that Leber engaged in a pattern of racketeering activity.

A "pattern of racketeering activity" is an essential element to any RICO claim. H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 232, 109 S. Ct. 2893, 106 L.Ed.2d 195 (1989); Goren v. New Vision Int'l Inc., 156 F.3d 721, 727, 732 (7th Cir.1998); Corley v. Rosewood Care Ctr., Inc. of Peoria, 142 F.3d 1041, 1048 (7th Cir.1998).

Providing guidance as to what constitutes a "pattern of racketeering activity," the Supreme Court noted that although two predicate acts of racketeering are necessary to form a pattern, two acts alone generally will not suffice. H.J. Inc., 492 U.S. at 237. Rather, in addition to at least two predicate acts, the RICO plaintiff must show that the predicate acts are related and amount to or pose a threat of continued racketeering activity. Id.; McDonald v. Schencker, 18 F.3d 491, 497 (7th Cir. 1994). This is commonly referred to as the "continuity plus relationship" test. LaSalle Bank Northbrook v. Baker, 1994 WL 630705, at *2 (N.D. Ill. Nov.9, 1994).

The continuity plus relationship "is both a closed-ended and open-ended concept, referring to either a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition." H.J. Inc., 492 U.S. at 241. Thus, continuity is "centrally a temporal concept." Id. at 242. Consequently, because either closed-ended or open-ended allegations are sufficient to allege the requirement of continuity, the court will examine the allegations in Fox Lake's Complaint under both closed-ended and open-ended continuity. See McDonald, 18 F.3d at 497-98 (applying both the open-ended and closed-ended tests to determine the sufficiency of the plaintiff's allegations).

1. Closed-ended Continuity

"A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time." H.J. Inc., 492 U.S. at 242. According to the Supreme Court, "[p]redicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct." Id.

To guide the district courts determining closed-ended continuity, the Seventh Circuit has set forth five factors: (1) the number and variety of predicate acts; (2) the length of time over which the predicate acts were committed; (3) the number of victims; (4) the presence of separate schemes; and (5) the occurrence of distinct injuries. Morgan v. Bank of Waukegan, 804 F.2d 970, 975 (7th Cir.1986). See also McDonald, 18 F.3d at 497-98; Corley, 142 F.3d at 1049. Neither the presence nor absence of any of these factors is dispositive. Uniroyal Goodrich Tire Co. v. Mutual Trading Corp., 63 F.3d 516, 523 (7th Cir.1995). Instead, the court must "apply these factors with an eye toward achieving a 'natural and commonsense' result, recognizing that 'Congress was concerned in RICO with long-term criminal conduct.'" Vicom, Inc., 20 F.3d at 780. Accordingly, the court will examine each of these five factors in turn.

a. The Number and Variety of Predicate Acts

The sheer number of predicate acts is not dispositive of continuity. LaSalle Bank Northbrook, 1994 WL 630705, at *4. In addition, the Seventh Circuit "does not look favorably on relying on many instances of mail and wire fraud to form a pattern." Hartz v. Friedman, 919 F.2d 469, 473 (7th Cir.1990).

Here, the court finds that Fox Lake has alleged four identical predicate acts – the four alleged mailings. Accordingly, the court finds that the number and variety of predicate acts weighs against a finding that Fox Lake has sufficiently alleged a "pattern of racketeering activity." See Brandon Apparek Group, Inc. v. Quitman Mfg. Co., 52 F. Supp. 913, 918-19 (N.D. Ill. 1999) (holding that three predicate acts did not constitute a “pattern of racketeering activity”).

b. The Length of Time Over Which the Predicate Acts Were Committed

The length of time over which the predicate acts were committed is the "single most important aspect of the closed-ended continuity analysis" and "is perhaps the closest thing [the Seventh Circuit] has to a brightline continuity test." Vicom, Inc., 20 F.3d at 780-81. The predicate acts must extend over a "substantial" period of time. Midwest Grinding Co. v. Spitz, 976 F.2d 1016, 1024 (7th Cir.1992). Seventh Circuit case law shows that 23 months likely does not constitute a substantial period of time for the purpose of establishing closed-ended continuity. See Talbot v. Robert Matthews Distrib. Co., 961 F.2d 654, 663 (7th Cir.1992) (no pattern where single scheme occurred over period of years); J.D. Marshall, 935 F.2d at 819 (same over a thirteen-month period); U.S. Textiles, 911 F.2d at 1266 (same over a sixteen-month period); Hartz v. Friedman, 919 F.2d 469, 473 (7th Cir.1990) (same over an eighteen-month period); New Burnham Prairie Homes v. Village of Burnham, 910 F.2d 1474, 1478 (7th Cir.1990) (same over several years); Elliot v. Chicago Motor Club Ins., 809 F.2d 347, 350 (7th Cir. 1986) (same over several years).

Accordingly, because Fox Lake has alleged that the four predicate acts were committed over a 23 month period, the court finds that Fox Lake's claim fails to allege that the predicate acts took place over a "substantial period of time."

c. The Number of Victims

Although RICO does not require multiple victims, whether there are multiple victims is highly relevant to the inquiry of continuity. LaSalle Bank Northbrook, 1994 WL 630705, at *4. Case law from this Circuit shows that the existence of only one victim weighs against a finding of closed-ended continuity. See McDonald, 18 F.3d at 497-98; Midwest Grinding Co., 976 F.2d at 1025; J.D. Marshall, 935 F.2d at 819; Brandon Apparek Group, Inc., 52 F. Supp. at 920; Chapman, 1997 WL 321681, at *7.

Here, the court finds that Fox Lake has only alleged one victim of the fraudulent scheme (itself), which thus weighs against a finding that Fox Lake has sufficiently alleged a "pattern of racketeering activity."

d. The Presence of Separate Schemes

While RICO does not require multiple schemes, whether there are multiple schemes is highly relevant to the inquiry of continuity. LaSalle Bank Northbrook, 1994 WL 630705, at *4. Thus, the presence of only one scheme weighs against a finding of closed-ended continuity. See McDonald, 18 F.3d at 497-98; Midwest Grinding Co., 976 F.2d at 1025; J.D. Marshall, 935 F.2d at 819; Brandon Apparek Group, Inc., 52 F. Supp. at 920; Chapman, 1997 WL 321681, at *7.

Here, despite its attempts to argue otherwise, Fox Lake has alleged only one fraudulent scheme -- a scheme to misappropriate 19 water meters. All of the alleged misrepresentations and fraudulent

activity revolve around this one main scheme. Accordingly, this factor weighs against a finding of a "pattern of racketeering activity."

e. The Occurrence of Distinct Injuries

The final factor that the court must consider is "whether [the] injury was 'distinct' in the sense that it signaled, or by itself constituted, a threat of 'continuing' criminal activity." U.S. Textiles, Inc. v. Anheuser-Busch Co., 911 F.2d 1261, 1269 (7th Cir.1990). A distinct injury is a different type of injury, not multiple instances of the same injury. LaSalle Bank Northbrook, 1994 WL 630705, at *4. The existence of only one distinct injury weighs against the finding of closed-ended continuity. See McDonald, 18 F.3d at 497-98; Midwest Grinding Co., 976 F.2d at 1025; J.D. Marshall, 935 F.2d at 819; Brandon Apparek Group, Inc., 52 F. Supp. at 920; Chapman, 1997 WL 321681, at *7.

Here, Fox Lake attempts to argue that it suffered multiple injuries from the fraudulent scheme. However, the only injury that Fox Lake alleged is the misappropriation of the 19 water meters. This is only one type of injury. Accordingly, the court finds that this factor weighs against a finding that Fox Lake has sufficiently alleged a "pattern of racketeering activity."

In conclusion, Fox Lake has failed to allege facts to satisfy the five Morgan factors. At best, Fox Lake has alleged one fraudulent scheme that lasted for 23 months, involved four identical predicate acts and one scheme, and resulted in only one type of injury. Accordingly, the court finds that Fox Lake has failed to allege a closed-ended pattern of racketeering activity.³ See McDonald, 18 F.3d at

³ The court notes that even if it had found that 23 months weighed in favor of closed-ended continuity, the other factors – one scheme, one victim, one distinct injury, and four identical predicate acts – weigh in favor of this court not finding a closed-ended conspiracy. See LaSalle Bank Northbrook, 1994 WL 630705, at *5 (dismissing RICO complaint for failure to adequately plead

497-98 (one scheme, one victim, and three predicate acts did not constitute closed-ended continuity); J.D. Marshall, 935 F.2d at 819 (one scheme, one victim, and one predicate act insufficient to allege closed-ended continuity); Brandon Apparek Group, Inc., 52 F. Supp. at 920 (three predicate acts, one victim, one scheme, and one injury not sufficient to allege closed-ended continuity); Chapman, 1997 WL 321681, at *7 (one victim, one scheme, and one injury does not constitute a pattern of racketeering under RICO).

2. Open-ended Continuity

In contrast to closed-ended continuity, open-ended continuity "may involve predicate acts occurring over a short period of time so long as there is a threat that the conduct will recur in the future." Corley, 142 F.3d at 1049. A plaintiff may allege open-ended continuity by sufficiently pleading that: (1) there exists a specific threat of repetition; (2) the predicate acts are a part of a legitimate company's regular way of conducting ongoing business; or (3) the defendant operates a long-term association existing for criminal purposes. Vicom, Inc., 20 F.3d at 782; Midwest Grinding, 976 F.2d at 1023. "A conspiracy ends when the design to commit substantive misconduct ends; it does not continue beyond that point 'merely because the conspirators take steps to bury their traces, in order to avoid detection and punishment after the central criminal purpose has been accomplished.'" Id. at 1024, quoting Grunewald v. United States, 353 U.S. 391, 405, 77 S. Ct. 963, 974 (1957). Thus,

closed-ended continuity, where the plaintiff alleged a single victim, one scheme which was conducted over 26 months, and a single distinct injury).

when a defendant is fired or leaves a job where he was committing the predicate acts, the threat of repetition ends, and there can be no opened-ended continuity. McDonald, 18 F.3d at 497; Midwest Grinding Co., 976 F.2d at 1023.

Here, Leber has not worked for Fox Lake since April of 1995, and Smith Engineering has not performed any work for Fox Lake since June of 1997. Therefore, Fox Lake cannot allege that there exists a threat of repeated criminal activity.

In conclusion, Fox Lake has failed to allege either closed-ended or open-ended continuity, and therefore, has failed to allege a "pattern of racketeering activity," which is fatal to its Section 1962(a) claim. J.D. Marshall Int'l, Inc. v. Redstart, Inc., 935 F.2d 815, 820 (7th Cir.1991) (insufficiently pleading the "crucial" element of pattern of racketeering activity "rings the death knell" for RICO claims under § 1962). Accordingly, the court grants Leber's motion to dismiss Count I.⁴

II. Count II – Section 1962(d) RICO Claim

A Section 1962(d) claim, like a Section 1962(a) claim, is "premised on the existence of a pattern of racketeering." Midwest Grinding Co., Inc., 976 F.2d at 1026. Therefore, because this court has found that Fox Lake has failed to allege a pattern of racketeering, as detailed above in the discussion of the Section 1962(a) claim, this court need not address this issue, and grants Leber's

⁴ In its Response, Fox Lake contends that after reading the cases cited by Leber, that it now believes that it also has a colorable claim against Leber under Section 1962(c). (Resp. at 4, n.3.) Because this court has found that Fox Lake has failed to adequately plead a "pattern of racketeering" in its Section 1962(a) claim, this court also holds that Fox Lake has failed to adequately plead a Section 1962(c) claim. See Chapman, 1997 WL 321681, at *7 (dismissing Section 1962(c) claim, without discussion, after finding that the plaintiff had failed to allege a "pattern of racketeering" in its Section 1962(a) claim).

motion to dismiss Fox Lake's Section 1962(d) claim. Id. (affirming dismissal of a Section 1962(d) claim, where the court found that the plaintiff failed to adequately plead a "pattern of conspiracy" under Section 1962(a)).

III. State Law Claims

In addition to the RICO claims, Fox Lake asserts the following state law claims: Count III: a claim of conversion against Richard and Robert Leber; Count IV: a claim of fraud against Richard Leber; and Count V: a claim of breach of fiduciary duty against Richard Leber.

Generally, when a court dismisses all of the RICO claims before it, the court should also dismiss the remaining pendent state law claims without prejudice, unless the court has diversity jurisdiction over the pendant state claims. Early, 1999 WL 181994, at *8. See also Olive Can Co. v. Martin, 906 F.2d 1147, 1153 (7th Cir. 1990).

Consequently, because diversity does not exist here, this court grants Leber's motion and dismisses Counts III-V without prejudice.

CONCLUSION

For the foregoing reasons, Defendant Richard A. Leber, Jr.'s Motion to Dismiss Plaintiff Village of Fox Lake's Complaint [7-1], pursuant to Federal Rule of Civil Procedure 12(b)(6), is GRANTED, and the court dismisses the RICO claims, Counts I and III, with prejudice and the state law claims, Counts III-V, without prejudice.

ENTER

BLANCHE M. MANNING
U.S. DISTRICT COURT JUDGE

DATE:_____